Filed 6/20/19 Estate of Gomez CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

Estate of FRANCISCO LARA GOMEZ, Deceased. _____ LUCKY ISABEL GOMEZ, Plaintiff and Respondent, v. JESSE GOMEZ, Objector and Appellant.	B285213 (Los Angeles County Super. Ct. Nos. BP168846 & BP168757)

APPEAL from orders of the Superior Court of Los Angeles County, William P. Barry, Judge. Affirmed.

Michael A. Cisneros for Objector and Appellant.

Vogt, Resnick & Sherak and Jeany A. Duff for Plaintiff and Respondent.

Objector and appellant Jesse Gomez (Jesse), a son of decedent Francisco Lara Gomez (decedent), appeals orders after trial that invalidated decedent's will and trust and ordered Jesse to return certain real property to decedent's estate.[1] [2]

Jesse contends there is insufficient evidence to sustain the trial court's decision, but he has forfeited his arguments by failing to support them with citations to the appellate record. Therefore, the orders are affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

Jesse and respondent Lucky Gomez (Lucky) are two of ten adult children of decedent and decedent's wife, who predeceased him.

On December 22, 2006, decedent executed a "Last Will and Testament" that stated Jesse was his only child, named Jesse as executor of decedent's estate, and left the "rest, remainder, and residue" of the estate to decedent's living trust. At the same time, decedent executed the Declaration of Trust for the Francisco Lara Gomez Living Trust, which made no specific bequests and left 100 percent of the residual assets to Jesse. Decedent's signature was notarized by Elizabeth E. Lissin.

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[1] For purposes of clarity, and not intending any disrespect, we refer to members of the Gomez family by their first names. (*Estate of Kraus* (2010) 184 Cal.App.4th 103, 106, fn. 1.)

[2] The orders are appealable. (Prob. Code, § 1300, § 1303; Eisenberg, Cal. Prac. Guide: Civil Appeals & Writs (The Rutter Group 2018) § 2:191.5 et seq.)

All further statutory references are to the Probate Code unless otherwise specified. Also, all rule references are to the California Rules of Court.

On March 19, 2014, decedent, as trustee of his living trust, executed a grant deed conveying the real property at 11428 Fidel Avenue in Whittier, California, to Jesse, a single man, with the recital that the transfer was a bona fide gift and the grantor received nothing in return.[3] Lissin again served as the notary. The grant deed was recorded two months later.

Following decedent's death in October 2015, litigation ensued, including: Lucky's petition to have a will dated October 2015, shortly before decedent's death, admitted to probate; Jesse's competing petition to have the December 2006 will admitted to probate; Lucky's will contest challenging the validity of the December 2006 will; Jesse's will contest challenging the validity of the October 2015 will; and Lucky's petition seeking to recover property wrongfully transferred to Jesse and damages for financial elder abuse.

Following trial of the matter in June 2017, the trial court found, inter alia, that there was collusion between Jesse and the notary, and that decedent did not understand what he was signing in December 2006, as reflected by the fact that the purported will indicated decedent had only one child, Jesse. The trial court denied the competing probate petitions of Lucky and Jesse, and found the wills that had been proffered were the product of undue influence. The trial court also ordered Jesse to return the Whittier real property to the estate, stating "the Court having found that the Whittier property, as well as real property located in Mexico and transferred from [decedent] to [Jesse] on December 12, 2012, are assets of the Estate."

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[3] The Whittier property had been the family home, and was acquired by decedent and his wife in 1988.

Jesse filed a timely notice of appeal from the trial court's June 28, 2017 and July 26, 2017 orders.

CONTENTIONS

Jesse contends: the trial court erred in invalidating decedent's 2006 estate planning documents because the evidence does not support the trial court's finding of undue influence; the trial court's finding of collusion between Jesse and the notary is not supported by any evidence; there is no evidence to support the trial court's decision to invalidate decedent's transfer of the Whittier real property to Jesse in 2014; and the trial court erred in finding that decedent's properties in Mexico were part of decedent's estate.

DISCUSSION

1. *Jesse has forfeited his appellate challenge to the sufficiency of the evidence.*

The opening brief sets forth the proper standard of appellate review. It recognizes that the trial judge is the sole judge of credibility, that an appellant challenging the sufficiency of the evidence has a heavy burden to show there is no substantial evidence to support the trial court's findings, that the trier of fact is the sole arbiter of all conflicts in the evidence, and that the power of an appellate court begins and ends with the determination as to whether there is any substantial evidence, contradicted or uncontradicted, that will support the decision of the trier of fact. (See, e.g., *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 925-926; *Western Aggregates, Inc. v. County of Yuba* (2002) 101 Cal.App.4th 278, 290.)

Although the opening brief sets forth the proper standard of appellate review, the brief fails to discuss the insufficiency of the evidence in a way that would allow for meaningful review.

Specifically, the opening brief fails to comply with the rule that an appellant is required to direct the reviewing court to the parts of the record that show the claimed error.

It is established that "[a]n appellate court is not required to search the record to determine whether or not the record supports appellant['s] claim of error. It is the duty of counsel to refer the reviewing court to the portions of the record which support appellant['s] position." (*Green v. City of Los Angeles* (1974) 40 Cal.App.3d 819, 835 (*Green*).) Pursuant to the California Rules of Court, each brief must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." (Rule 8.204(a)(1)(C).) Furthermore, because a citation must be provided for "any reference to a matter in the record" (*ibid.*), it is not enough for the appellant to provide citations to the record in the Factual Background portion of the opening brief; the appellant must also provide pertinent citations to the record in the Argument portion of the brief. (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239, fn. 16.) If "no citation 'is furnished on a particular point, the court may treat it as [forfeited].' [Citation.]" (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.)

Moreover, "an attack on the evidence without a fair statement of the evidence is entitled to no consideration when it is apparent that a substantial amount of evidence was received on behalf of the respondent. [Citation.] Thus, appellants who challenge the decision of the trial court based upon the absence of substantial evidence to support it ' "are required to set forth in their brief all the material evidence on the point and *not merely their own evidence*. Unless this is done the error is deemed

waived." [Citations.]' (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.)" (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 (*Nwosu*).)

Here, although the Statement of Facts in the opening brief contains references to the record, the Argument portion of the opening brief, which spans pages 23 through 36, lacks a single citation to either the 588 page reporter's transcript or the clerk's transcript. For example, Jesse argues without specificity that although Lucky may have addressed some of the factors required to show undue influence, "the evidence does not support a finding that she sustained her burden of proof on all of the elements and thus the Court's decision to invalidate the Decedent's 2006 Estate Planning Documents was in error." Similarly, Jesse contends that "a review of the Trial Transcript reveals there is a void in the testimony, vis-à-vis the discussions between Jesse and the Decedent regarding his estate plans." Jesse also asserts the trial court's finding of collusion between Jesse and the notary is not supported by any evidence.

As indicated, an attack on the evidence without a fair statement of the evidence is entitled to no consideration "when it is apparent that a substantial amount of evidence was received on behalf of the respondent." (*Nwosu*, *supra*, 122 Cal.App.4th at p. 1246.) For example, on the issue of collusion between Jesse and the notary, the evidence showed that Jesse repeatedly accompanied decedent to the notary's office, the notary also was a paralegal and she prepared decedent's will and trust in 2006, and Jesse paid her $700 at the time of the signing of the estate planning documents. Jesse's burden as the appellant was to address all the adverse evidence in his opening brief, rather than

simply to argue in conclusory fashion that there is no substantial evidence to support the trial court's finding of collusion.

In sum, Jesse's arguments concerning the insufficiency of the evidence are not supported by *any* citations to the record,[4] and would require this court to search the record for evidence supporting Jesse's claim that the evidence is insufficient to sustain the trial court's decision, a task in which this court is not required to engage.[5] It is not this court's role to search the trial transcript, or to act as backup counsel for appellant by supplying the omitted record references. (*Young v. Fish & Game Com*. (2018) 24 Cal.App.5th 1178, 1190-1191; *Green*, *supra*, 40 Cal.App.3d at p. 835; *In re Marriage of Schroeder* (1987) 192 Cal.App.3d 1154, 1164.) Because Jesse's challenge in the opening brief to the sufficiency of the evidence is devoid of references to

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[4] The reply brief belatedly provides some citations to the record. However, "[p]oints raised for the first time in a reply brief will ordinarily not be considered, because such consideration would deprive the respondent of an opportunity to counter the argument. [Citation.]" (*American Drug Stores, Inc. v. Stroh* (1992) 10 Cal.App.4th 1446, 1453.) Thus, an appellant is required to provide pertinent citations to the record in the Argument portion of the opening brief. (*City of Lincoln v. Barringer*, *supra*, 102 Cal.App.4th at p. 1239, fn. 16.)

[5] We also note that the opening brief does not appear to address the conflicting evidence that was adduced at trial or the inferences to be drawn from that evidence, and essentially argues that Jesse's evidence required the trial court to rule in his favor.

the appellate record, this is an appropriate case in which to apply the forfeiture rule.[6]

2. *Jesse's contention relating to the Mexico properties.*

As indicated, in addition to invalidating the 2006 estate planning documents, the trial court ordered Jesse to return the Whittier real property to the estate, stating "the Court having found that the Whittier property, *as well as real property located in Mexico* and transferred from [decedent] to [Jesse] on December 12, 2012, are assets of the Estate." (Italics added.)

Jesse contends the trial court lacked jurisdiction to make a finding that decedent's Mexico properties are part of decedent's estate, pursuant to the principle that " 'every state has plenary power with respect to the administration and disposition of the estates of deceased persons as to all property of such persons found within its jurisdiction.' " (*In re Estrem's Estate* (1940) 16 Cal.2d 563, 567-568.) Respondent does not dispute that Mexico has jurisdiction to administer decedent's real property that is located in that country.

Nonetheless, Jesse's contention is an irrelevancy because, as he acknowledges, the trial court's order "does not compel Jesse to transfer the Mexico properties." No order was made as to the recovery of unspecified property in Mexico or the administration thereof. The trial court merely ordered Jesse to transfer the *Whittier real property* to decedent's estate, and Jesse has not shown any error in that regard.

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[6] Ironically, Jesse's reply brief faults the respondent's brief for failing to cite to the appellate record.

DISPOSITION

The orders appealed from are affirmed. Respondent shall recover costs on appeal.

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EDMON, P. J.

We concur:

LAVIN, J.

EGERTON, J.